UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/646
15 July 1994

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 646

Case No. 726: SOLTES

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, First Vice-President, presiding; Mr. Luis de Posadas Montero, Second Vice-President; Mr. Mikuin Leliel Balanda;

Whereas, on 23 March 1993, Dusan Soltes, a former staff member of the United Nations, filed an application in which he requested the Tribunal, inter alia:

"(a) To order [the Secretary-General]:

...

(ii) To submit [a complete itemized statement of the balance of his accounts for payments due for his] services in Burma under UNDTCD/BUR/83/004 (1985-90). ...

(b) ...

(i) [To make the final payment due to the Applicant in US dollars, in British Pounds or in Kuwaiti Dinars, instead of in the currency of his home country];

(ii) [To reimburse him for] income tax levied on my salary in 1989 in the amount of US$15,500 which I had to pay to the former Czechoslovak Socialist Government (...);

...

(d) [To compensate him for lost interest on the payment due at the rate paid on his] Chemical Bank... super-savings account during the period from October 1990 to the date of the deposit of all outstanding payments to my particular account...".

Whereas the Respondent filed his answer on 15 July 1993;

Whereas the Applicant filed written observations on 21 August 1993;

Whereas, on 30 September 1993, the Respondent submitted an additional document and on 15 December 1993, the Applicant provided his comments thereon;

Whereas, on 7 July 1994, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant, a national of the former Czech and Slovak Federal Republic, served on a project personnel appointment, under the 200 Series of the Staff Regulations and Rules, at the L-5, step V level, as a Computer Training Expert in the former Department of Technical Co-operation for Development (DTCD), from 1 June 1985 through 30 June 1990. His official duty station was Yangoon, Union of Myanmar.

At the end of the Applicant's assignment, in a cable dated 6 July 1990, DTCD authorized the Applicant's repatriation.

The International Telecommunication Union (ITU) then recruited the Applicant for a mission in Kuwait, initially for a period of one year, with effect from 10 July 1990.

On 21 July 1991, DTCD informed the Applicant that his repatriation grant would be payable in the currency of his home country, the Czech and Slovak Federal Republic.

On 30 September and 16 October 1991, the Applicant requested the Secretary-General to review this decision.

On 18 November 1991, the Office for Human Resources Management agreed, as an exception, to pay the repatriation grant in

Kuwaiti currency, upon the condition that the Applicant legally change his residence to Kuwait. This decision was communicated to the Applicant on 2 December 1991.

According to the record, the Applicant resides in the former Czech and Slovak Federal Republic[1], awaiting authorization to return to his assignment in Kuwait.

On 19 January 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 14 January 1993. Its considerations, conclusions and recommendations read as follows:

"Considerations

19. The Panel considered that it would be unlikely for the Appellant to return to Kuwait as ITU had advised the JAB, via fax dated 18 October 1992, that the Appellant's contract had ended on 18 July 1991.

20. The Panel further considered that repatriation grants are made in the currency of a staff member's home country because the purpose of such grants is to facilitate reintegration. The Appellant did return to his home country, the Czech and Slovak Federal Republic.

Conclusions and Recommendations

21. The Panel concluded that there was no longer any basis for payment of the Appellant's repatriation grant in Kuwaiti currency because the Appellant neither returned to Kuwait nor does it appear that he is to be returned there by his former employer.

22. The Panel also concluded that the Appellant has given no grounds for demanding that his repatriation grant be paid in US dollars; he was not repatriated to the United States nor does he reside in that country.

23. Therefore, the Panel recommends that, in accordance with staff rule 209.8, the Appellant be paid his repatriation grant in the currency of his home country, the Czech and Slovak Federal Republic."

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[1] As of 31 December 1992, the Czech and Slovak Federal Republic ceased to exist. At present the Applicant resides in Slovakia.

On 3 February 1993, the Director of Personnel transmitted to the Applicant a copy of the JAB report and informed him as follows:

> "The Secretary-General has examined your case in the light of the Board's report. He agrees with the Board's conclusion and recommendation that, in the absence of proof of relocation you be paid repatriation grant, as provided for under staff rule 209.8, in the currency of your home country, the then Czech and Slovak Federal Republic."

On 23 March 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The repatriation grant should be paid in US dollars, in British pounds, or in Kuwaiti dinars.

2. The Applicant is entitled to reimbursement of taxes levied on his salary by the former Czech and Slovak Federal Republic.

Whereas the Respondent's principal contentions are:

1. The Applicant's plea for reimbursement of income taxes is not receivable because it was not previously submitted to a joint appeals board, pursuant to article 7.1 of the Tribunal's Statute.

2. There is no legal basis for the payment of the Applicant's repatriation grant in a currency other than that of his country of residence.

The Tribunal, having deliberated from 27 June to 15 July 1994, now pronounces the following judgement:

I. The Applicant served as a Computer Training Expert in the former Department of Technical Co-operation for Development (DTCD), Technical Assistance Recruitment and Administration Service (TARAS)

in Yangoon, Union of Myanmar, until 30 June 1990. He was then recruited by the International Telecommunication Union (ITU) for a mission in Kuwait, with effect from 10 July 1990. At the end of his assignment in Myanmar, the Applicant was informed that the repatriation grant due to him was payable in the currency of his home country, the Czech and Slovak Federal Republic.

II. After requesting the Administration, without success, to pay his repatriation grant in US dollars, in British pounds, or in Kuwaiti dinars, the Applicant filed his appeal with the Tribunal.

III. Firstly, the Applicant maintains that his repatriation grant should be paid in US dollars, in British pounds or in Kuwaiti dinars, on the ground that Kuwait was the country where he intended to establish his residence following the expiration of his appointment with TARAS, had he not been evacuated to his country of origin.

IV. The Respondent maintains that there is no legal basis for the payment of the Applicant's repatriation grant in a currency other than that of his country of residence. In fact, the Respondent, in the exercise of his discretion, agreed to pay the grant in Kuwaiti currency, if the Applicant actually established his residence in Kuwait.

V. According to current Staff Regulations and Rules, the repatriation grant should be payable in the currency of the home country of the staff member or in a different currency, subject to the submission by the former staff member of evidence of relocation away from the country of the last duty station. (See staff regulation 9.4 and Annex IV to the Staff Regulations and staff rule 209.8)

VI. In the present case, the Applicant states, but without submitting proof of residence in Kuwait, that he intended to reside

there. His permit of residence was issued to this effect for five years, from 1 July 1990 to July 1995, but the Applicant was evacuated from Kuwait because of the Persian Gulf war. Hence, he did not actually establish a residence in Kuwait in any meaningful sense of the word. His intention alone is insufficient, as the employment contract on which it was based was not fulfilled because of the war.

The Applicant does not prove that he has established his residence in the USA or in Great Britain. Thus, he has no basis for claiming payment of his repatriation grant in the currency of either of these two countries.

VII. The Tribunal finds that the application, the written observations and a letter dated 1 June 1994, submitted by the Applicant, were sent from Bratislava in Slovakia, where, it appears to the Tribunal, the Applicant has maintained his residence since the expiration of his contract on 30 June 1990, after his evacuation from Kuwait.

VIII. Therefore, in conformity with the objectives of the repatriation grant, to facilitate the integration of the staff member in the place where he or she will reside, the Administration correctly decided to pay the repatriation grant in the currency of the Applicant's home country.

IX. Secondly, the Applicant contends that he has a right to reimbursement of taxes levied on his UN salary, in 1989, by the Czech and Slovak Federal Republic.

The Respondent maintains that the claim is not receivable because it was not previously submitted to a joint appeals board.

X. The Tribunal agrees with the Respondent and finds that this claim is not receivable because it was not previously submitted to a joint appeals board, pursuant to article 7.1 of the Tribunal's Statute.

XI. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Jerome ACKERMAN
First Vice-President, presiding

Luis de POSADAS MONTERO
Second Vice-President

Mikuin Leliel BALANDA
Member

Geneva, 15 July 1994

R. Maria VICIEN MILBURN
Executive Secretary